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In the Supreme Court of the United States

OCTOBER TERM, 1979

COMMITTEE TO ELECT LYNDON LAROUCHE, ET AL.,
PETITIONERS,
v.
FEDERAL ELECTION COMMISSION

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION

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Respondent, Federal Election Commission (the Commission), requests that the petition for writ of certiorari by petitioners, Committee to Elect Lyndon LaRouche (CTEL or the Committee), National Caucus of Labor Committees (NCLC), Campaign Publications, Inc. (Campaign), and New Solidarity International Press Service (New Solidarity), to review the judgment of the United States Court of Appeals for the District of Columbia Circuit in this case be denied.

OPINION BELOW

The opinion of the court of appeals, which is reported at Fed. Elec. Camp. Fin. Guide (CCH) ¶ 9090, appears in the appendix of the petition at 41a.

JURISDICTION

The jurisdictional requisites are set forth in the petition. *See also* 2 U.S.C. § 437d(a)(6).

QUESTION PRESENTED

Whether the United States Court of Appeals for the District of Columbia Circuit properly upheld the district court's enforcement of the subpoenas issued by the Commission in this case.

STATUTES INVOLVED

The relevant statutory and constitutional provisions are set forth in the petition at 2.

STATEMENT OF THE CASE

The subpoenas sought to be enforced in this case were issued in connection with an investigation by the Commission of possible violations of the Federal Election Campaign Act (FECA or the Act).[1] Letters notifying USLP, CTEL, NCLC, New Solidarity, and Campaign of the Commission's findings of possible violations had been sent to each organization on May 13, 1977 and again on June 9, 1977. Thereafter, by letters dated June 11 and 13, 1977, local Washington counsel notified the Commission that they had been retained to represent the organizations. On June 24, 1977, the Commission, pursuant to 2 U.S.C. § 437d(a)(3), subpoenaed the organizations to produce at their New York offices, specified documents pertaining to their expenditures, contributions, and lease and loan agreements.

On July 8, 1977, when Commission staff members went to New York to examine the subpoenaed documents, representatives of the five organizations and their counsel indicated that the materials were not yet assembled. Counsel for the Commission nonetheless reviewed the subpoenas and attachments with the representatives and their counsel. At this meeting, New York counsel stipulated to produce the documents on July 20, 1977; counsel for the Commission agreed to return to New York on that date. On July 19, however, the Commission was notified that the organizations would not comply.

On August 23, 1977, the Commission petitioned the United States District Court for the District of Columbia for enforcement of the subpoenas pursuant to 2 U.S.C. § 437d(b). A show cause order was issued, requiring the organizations to appear September 8, 1977.

On September 7, 1977, Washington counsel filed a motion to dismiss the petition on grounds of (1)

[1] The Commission, on May 11, 1977, found reason to believe that NCLC had violated 2 U.S.C. §§ 433, 434, 441a by failing to register as a political committee affiliated with CTEL and USLP and to file disclosure reports with the Commission and by making in-kind contributions to CTEL and USLP in excess of the contribution limits of the Act. The Commission also found reason to believe that New Solidarity and Campaign had violated 2 U.S.C. § 441b(a) by making corporate contributions to CTEL and USLP, and that both USLP and CTEL had violated 2 U.S.C. § 433(b)(2) by failing to report affiliation with each other and NCLC.

lack of subject matter jurisdiction; (2) insufficiency of service; and (3) lack of adequate time to prepare a defense to the subpoenas' enforcement. At the hearing, local counsel also alleged that the subpoenas were issued as harassment and retaliation. At the conclusion of his argument, local counsel requested leave to file a "written statement" within 10 days. The district court rejected counsel's request.

On September 26, 1977, the district court issued a Memorandum Order concluding that it had subject matter jurisdiction because the Commission's inquiry was being conducted in the District of Columbia. The district court also held that, except for the USLP, all of the organizations had been properly served, and had been afforded adequate time to prepare their defense. It further rejected the claim that the subpoenas were issued for the purpose of harassment or retaliation. Accordingly, the district court ordered CTEL, NCLC, New Solidarity, and Campaign to comply with the Commission's subpoenas.

The order of the district court was appealed to the United States Court of Appeals for the District of Columbia Circuit and affirmed. Petitioners now seek review by this Court of that decision.

REASONS WHY THE WRIT SHOULD BE DENIED

Petitioners raise only issues of statutory construction, on which there is no conflict in the circuits. Further review by this Court is not warranted.

1. The court below correctly decided that the inquiry

at issue was carried on in the District of Columbia, and that the district court had subject matter jurisdiction to entertain the suit.[2] 2 U.S.C. § 437d(b), the jurisdictional provision for enforcement of Commission subpoenas, provides:

> Any United States district court within the jurisdiction of which any inquiry is carried on, may, upon petition by the Commission, in case of refusal to obey a subpoena or order of the Commission issued under subsection (a) of this section, issue an order requiring compliance therewith. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

Noting that it was the first court, other than the district court, to define the scope of § 437d(b), the court of appeals analogized to similar jurisdictional provisions in other agency statutes. After exhaustive review of case law interpreting similar statutes, Pet. App. at 50a–55a, the court properly concluded that such case law provided "an appropriate guide in our task of determining where the Commission's 'inquiry [was] carried on' within the meaning of section 437d(b)." Pet. App. at 55a.

Accordingly, applying a two-prong test, the court of appeals determined that the District of Columbia

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[2] Petitioners had also alleged below that the court was without personal jurisdiction because 2 U.S.C. § 437d(b) did not authorize extraterritorial service of process and petitioners had been served in New York. The court rejected this argument. Pet. App. at 58a–66a. The petition does not raise this issue.

was a place[3] in which the Commission's inquiry was conducted. The court found the nexus in the fact that this jurisdiction was where the Commission maintains its headquarters, where the Commission authorized the auditing of CTEL records and the interviewing of contributors, where the Commission determined that there was reason to believe that petitioners may have violated various federal election laws, where all correspondence regarding possible violations emanated, and where the subpoenas were in fact issued.[4] Moreover, the court of appeals stated:

> We also regard it as significant, though not surprising, that appellants, when first notified by letter that they were under investigation, retained local counsel in the District of Columbia. That appellants retained local counsel before hiring New York counsel, and long before this enforcement petition was filed, strongly suggests that appellants themselves recognized that the District of Columbia was the important situs of the investigation.

Pet. App. at 56a.

2. The court of appeals also correctly found that the choice of the District of Columbia as a jurisdiction in which the subpoenas could be enforced was not beyond the "bound of reasonableness." Taking into account a

[3] The court stated that "[t]o say that the Commission's inquiry was being carried on in the District of Columbia is not to say that it was not also being carried on in New York." Pet. App. at 58a n.9. Rather the court found the Commission's investigation to be national in scope. Thus, the court found *FTC* v. *Western General Dairies, Inc.*, 432 F. Supp. 31 (N.D. Cal. 1977) inapposite and petitioners' reliance thereon misplaced. Pet. App. at 57a n.8.

[4] While the subpoenas were returnable in New York, the court found and the record indicates that "this was done solely for the convenience of appellants." Pet. App. at 56a n.7.

possible chilling effect on associational rights, the court stated:

> In the instant case . . . the record is devoid of any evidence of chill resulting from the fact that the subpoenas were enforced in the District of Columbia.

Pet. App. at 57a.

3. The court of appeals also correctly upheld the district court's denial of petitioners' request to file a "written statement." Pet. App. at 69a. Petitioners attempted to convince the court of appeals that this request had actually been a request for discovery or for a hearing on their oral allegation of harassment. However, the court of appeals correctly concluded, on the basis of the record, that "[i]t surely is not the obligation of the district court *sua sponte* to conduct a preenforcement evidentiary hearing whenever counsel orally suggests an improper purpose." Pet. App. at 70a–71a.[5]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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January 1980

[5] Although the petitioners argue that they were afforded insufficient time to prepare for the September 8, 1977, hearing in the district court, local Washington counsel had been retained by petitioners as early as June 11, 1977. Pet. App. at 45a–46a.

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